

REMARKS

Claims 21-36 are presently pending in the case.

Reconsideration of the present case in view of the remarks herein is requested.

Claim rejections under 35 USC 103(a)

The Examiner rejected claims 21-36 under 35 USC 103(a) as being unpatentable over U.S. Patent 5,655,520 to Howe et al (hereinafter Howe et al). The rejection is traversed.

Howe et al does not render Applicant's invention as set forth in claim 21 unpatentable because it does not teach or suggest all features positively recited in the claim. Claim 21 is to a device for controlling the delivery of an aerosolized active agent to the lungs comprising, inter alia, a valve that provides a high flow resistance at the onset of the patient's inhalation and that subsequently opens to provide a lower flow resistance, wherein the lower flow resistance allows for a higher flow rate through the device. In contrast, Howe et al discloses a device that operates in the opposite manner to that which is presently claimed. Howe et al discloses a valve that is open at the onset of inhalation (column 2 line 64 through column 3 line 3). Then, as a user begins inhaling, the opening narrows (column 3 lines 4-8). Thus, Howe et al has a low flow resistance at the onset of inhalation and subsequently closes to provide a higher flow resistance. The flow resistance of the Howe et al device is never lower than it is at the onset of inhalation. Therefore, Howe et al does not disclose or suggest a valve that provides a high flow resistance at the onset of inhalation that subsequently changes to a lower flow resistance. Since all elements of claim 21 are not taught or suggested by the reference, the claim is not rendered unpatentable by Howe et al.

In short, the present device and the device of Howe et al operate oppositely. The rejection appears to be one based on semantics. The Examiner is of the opinion that if a patient were to begin treatment with a strong inhalation, the limitations of the present claim would be met. Applicant respectfully disagrees. Such a scenario would not be at the onset of the patient's inhalation. When a patient is inhaling strongly, the inhalation would no longer be at the onset of the inhalation.

In addition, Howe et al does not render claim 21 unpatentable because Howe et al specifically teaches away from Applicant's claimed invention. As recited in claim 21, the lower flow resistance allows for a higher flow rate through the claimed device. This is in direct opposition to the teachings of Howe et al. The purpose of Howe et al is to regulate the flow resistance in order to provide a constant flow rate (see column 2 lines 30-37). Thus, Howe et al does not teach the alteration of flow rate and, in fact, specifically teaches against it. Accordingly, one of ordinary skill in the art would not have found it obvious to alter Howe et al in a manner that would arrive at Applicant's invention since doing so would destroy the purpose of the Howe et al device.

Claims 22-27 depend from and include the limitations of claim 21. Therefore, Howlett does not render claims 22-27 unpatentable for at least the reasons discussed above.

Claim 28 is also not rendered unpatentable by Howe et al. Claim 28 recites a valve that provides a high flow resistance at the onset of the patient's inhalation and that subsequently opens to provide a lower flow resistance which corresponds to a higher flow rate. Since Howe et al does not disclose a valve which provides a high flow resistance at the onset of inhalation and which subsequently opens to provide a higher flow rate, as discussed above, Howe et al does not render claim 28 unpatentable.

For at least the reasons above, the invention set forth in claim 28 is not rendered obvious by the teachings of Howlett nor are claims 29-31 which depend from claim 28. Accordingly, it is requested that the rejections be withdrawn.

Claim 32 is also not rendered unpatentable by Howe et al. Claim 32 recites a valve that is adapted to provide a first flow resistance at the onset of the patient's inhalation and that subsequently opens to provide a second flow resistance, the second flow resistance being less than the first flow resistance. Since Howe et al does not disclose this feature, as discussed above, Howe et al does not render claim 28 unpatentable.

Claims 33-36 depend from claim 32 and are not rendered unpatentable by Howe et al for at least the same reason as the claim from which they depend.

Information Disclosure Statement

Applicant has filed a number of information disclosure statements in compliance with MPEP section 609. For example, information disclosure statements were filed on July 28, 2000, on February 26, 2001, on April 3, 2001, on August 31, 2001, on September 20, 2001, on March 5, 2002, and on October 29, 2002. Applicant included, in a previous response, copies of the statements and copies of the postcard returned by the Patent Office indicating that the information disclosure statements were received. Applicant request indication of the consideration of the references cited in the information disclosure statements.


Conclusion

The claims are allowable for the reasons given above. Thus, the Examiner is respectfully requested to reconsider the present rejections and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

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Dated: 13 JUN 2006

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